

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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MidAmerican Energy Company	:	
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	:	Docket No. 13-0423
Application for Approval of its Energy	:	
Efficiency Plan Pursuant to Section 8-408	:	Docket No. 13-0424 Cons.
of the Public Utilities Act.	:	
	:	
Request for a Waiver of Ill. Adm. Code	:	
Sections 410.210(A)(3)(E) and	:	
500.330(A)(1)(B)(v).	:	

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**REPLY BRIEF OF THE STAFF  
OF THE ILLINOIS COMMERCE COMMISSION**

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Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief in the instant proceeding.

**I. Background**

MidAmerican Energy Company (“MEC”, “MidAmerican” or the “Company”) is a multi-state jurisdictional utility that has offered electric and gas energy efficiency programs in Iowa since 2001. MidAmerican serves the bi-state area of the Quad Cities, which is a single metropolitan marketing area with substantial populations in both Iowa and Illinois.

On July 1, 2013, MEC filed its Verified Petition for approval of its five-year Illinois energy efficiency (“EE”) plan (“Plan”) as well as a determination of cost-effectiveness. Plan, at ¶ 4. MEC also filed direct testimony. This filing was docketed as Docket No. 13-

0423. Additionally, MEC filed a request (“Request”) for a waiver of Sections 410.210(A)(3)(E) and 500.330(a)(1)(B)(v) of the Illinois Administrative Code to continue to allow MidAmerican’s EE rider amounts to be added to the delivery charge on customer bills, rather than have the rider amounts appear as separate line items. *See generally*, Request. This filing was docketed as Docket No. 13-0424. On August 22, 2013, the Administrative Law Judge (“ALJ”) assigned to this proceeding held a preliminary hearing and established a schedule for the submission of pre-filed testimony and hearings. (*Tr.*, Aug. 22, 2013, p. 4.) Additionally, the ALJ granted Staff’s motion to consolidate the two dockets. (ALJ Notice, Aug. 26, 2013, at 1.)

At the August 16, 2013 evidentiary hearing, Jennifer Hinman, Economic Analyst in the Policy Division, testified on behalf of Staff. Mr. Charles B. Rea, Ms. Tina M. Yoder and Ms. Naomi G. Czachura, testified on behalf of MEC. The ALJ approved a briefing schedule and marked the record Heard and Taken. (ALJ Notice, Sep. 23, 2013, at 1.) The parties filed Initial Briefs (“IBs”) on October 10, 2013.

The parties generally agree on the Company’s proposed EE Plan, and Staff recommends it be approved, contingent on certain recommendations to which MEC has agreed; therefore, the parties will be submitting a joint Proposed Draft Order. Staff opposes MEC’s request for a waiver and those reasons follow, below. Staff also seeks to clarify one issue on the Company’s Plan evaluation, that of collaboration between Staff and MEC, and one issue concerning adding cost-ineffective measures after Commission approval. Both of these issues are also described below.

Some of the issues raised in MEC’s IB were addressed in Staff’s IB and, in the interest of avoiding unnecessary duplication, Staff has not repeated every argument or

response previously made in Staff's IB. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff's IB.

## **II. Argument**

### **A. Waiver**

MEC continues to assert that it should not be required to list the charges for EE programs on its Illinois customers' bills. (MEC IB, 11-15.) MEC argues that Sections 500.330 and 410.210 of the Ill. Adm. Code do not specifically require energy efficiency rider amounts, but "instead refer generically to 'other applicable adjustments.'" (*Id.*, at 12.) Staff again points out that the provisions of the Public Utilities Act ("PUA" or "Act") addressed to other Illinois electric and gas companies<sup>1</sup> do not specifically require charges relating to EE Riders to be separate line items, yet the Commission has approved the energy efficiency rider amounts as a separate line item on customers' bills for all the other Illinois utilities. (Staff IB, 3-4; see *generally* Docket Nos. 10-0570, 10-0568, 10-0562 and 10-0564.) Further, the phrase "other programs provided to customers by the entity" plainly indicates that "other programs" should be specifically denoted on customers' bills. (83 Ill. Adm. Code Sections 410.210(a)(3)(E) and 500.330.(a)(1)(B)(v).) MEC also argues that Section 8-408 is different from the EE legislation in Illinois and "the legislature clearly intended for small-multi-jurisdictional utilities like MidAmerican to be treated differently." (MEC IB, 12.)

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<sup>1</sup> See, *generally* 220 ILCS 5/8-103; 220 ILCS 5/8-104.

MEC ignores the plain language of the Illinois Administrative Code and overreaches in its interpretation of the legislative intent of Section 8-408 of the Act. When interpreting a statute, the primary objective is to ascertain and give effect to the intent of the legislature. Metro Utility Co. v. Illinois Commerce Commission, 262 Ill.App.3d 266, 274 (1994). The best indication of what the legislature intended is the statutory language itself. Metro Utility Co., 262 Ill.App.3d at 274. Clear and unambiguous terms are to be given their plain and ordinary meaning (West Suburban Bank v. Attorneys Title Insurance Fund, Inc., 326 Ill.App.3d 502, 507 (2001)), and where statutory provisions are clear and unambiguous, the plain language as written must be given effect, without reading into it exceptions, limitations, or conditions the legislature did not express (Davis v. Toshiba Machine Co., 186 Ill.2d 181, 184-185 (1999)). The plain language of 83 Ill. Adm. Code clearly states that the charges of “other programs” offered by MEC should be denoted on customers’ bills. Energy Efficiency programs can be nothing other than a “program offered.” MEC cannot intuit the legislature’s intent concerning Section 8-408 as it applies to those provisions of the Administrative Code, which are clear and unambiguous, requiring that the plain language as written must be given effect. Id.

Next, MEC argues that the state of Iowa does not require a line item for the energy efficiency charge on its bill for Iowa citizens. (MEC IB, 12.) Indeed, the state of Iowa made an explicit determination that there should not be a line item for the energy efficiency charge on its bill for Iowa citizens. Section 8-408 contains no such prohibition for Illinois. Additionally, the Commission has approved a line item for the energy efficiency charge on its bill for all other Illinois utilities having Energy efficiency programs. MEC states that the Quad cities bi-state metropolitan area is served by the same media market and this

creates confusion for customers. (Id. at 13.) While Staff understands MEC's concerns, it notes there are certainly myriad of other government differences across the two states that those residents regularly deal with; this does not seem like a reasonable reason to hamper the EE program's "outreach and transparency" to Illinois ratepayers that the Commission has previously encouraged. Further, Ameren Illinois Company ("Ameren") operates energy efficiency programs across Missouri and Illinois, indeed separated by the same river as Iowa and Illinois, and the Commission did not defer to Missouri rules when it has approved Ameren's past energy efficiency plans and line item charges. (See, e.g., Docket No. 10-0568) Moreover, MEC argues that a bill message or monthly reminder is more effective way to provide customer education than a bill line item. Id. Staff supports such a bill insert or reminder in conjunction with the line item to ensure that MEC's ratepayers are aware there are EE programs that they currently pay for, the amount they pay, and how to participate.

**B. Staff/MEC Evaluation Collaboration**

Second, Staff believes the process put in place informally between MidAmerican and Staff worked well for the last evaluations and it should be formalized through a Commission directive to continue this process. (Staff Ex. 1.0, 10-11.) Staff was invited to the routine evaluation update calls and received draft evaluation results at the same time as the Company. This process helps ensure some degree of independence in the evaluation findings. In his rebuttal testimony, MEC witness Rea agreed with Staff's recommendation. MEC witness Rea states:

I agree with Ms. Hinman that the process put in place informally between MidAmerican and ICC Staff worked well for MidAmerican's

last evaluations where ICC Staff and MidAmerican received information from the evaluators at the same time and ICC Staff was included in all planning and progress meetings. It is MidAmerican's intent to conduct future evaluations in the same manner. MidAmerican does not oppose Ms. Hinman's recommendation to formalize the process.

(MEC Ex. 5.0, 5.)

Accordingly, Staff recommends the Commission order MidAmerican to continue the informal process MidAmerican and Staff put in place previously with the evaluation contractor. Staff recommends the Commission order MidAmerican to ensure that Staff is invited to the routine evaluation update calls, and that Staff receives draft evaluation results at the same time as MidAmerican.

**C. Cost-Ineffective Measures Post-Plan Approval**

Finally, Staff witness Hinman made the following recommendation in direct testimony:

In order to help ensure that ratepayers receive the net benefits they are paying for as well as to ensure full compliance with the Commission's 12-0132 Order, I recommend the Commission direct the Company not to add cost-ineffective measures after Commission approval of the Plan or continue approved measures found to be cost-ineffective. A Commission directive concerning this is necessary because of concerns regarding MidAmerican adding cost-ineffective measures to the Residential Equipment program<sup>2</sup> in order to improve the Company's image for upcoming

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<sup>2</sup> The Residential Equipment program was one of the two programs found to be cost-ineffective in Illinois during implementation of MidAmerican's first EE Plan. The Commission only approved the Residential Equipment program's continued operation into 2013 on the basis that MidAmerican had to remove the cost-ineffective measures from the program. (MidAmerican Energy Co., ICC Docket No. 12-0132, Order at 17.)

rate cases.<sup>3</sup> (See Staff Ex. 1.1, 2-3; MEC Resp. to Staff DR JLH 1.01 Attach. H.)

(Staff Ex. 1.0, 10-11.) MidAmerican witness Yoder states that she “does not believe an additional Commission directive to that effect is necessary.” (MEC Exhibit 2.0, 4.) Staff believes a Commission directive to that effect is necessary because of concerns regarding MidAmerican adding cost-ineffective measures to the Residential Equipment program in order to improve the Company’s image for rate cases. (See Staff Ex. 1.1, 2-3; MEC Resp. to Staff DR JLH 1.01 Attach. H.) Accordingly, Staff recommends the Commission direct the Company not to add cost-ineffective measures after Commission approval of the Plan or continue approved measures found to be cost-ineffective.

### **III. Conclusion**

For the reasons set forth above Staff respectfully requests that the Commission’s Final Order in the instant proceeding approve MEC’s EE Plan, including the modifications to that Plan as recommended by Staff to which MEC does not object, and reject MEC’s request for a waiver as consistent with Staff’s recommendations in this Reply Brief.

Respectfully submitted,

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<sup>3</sup> “Retain ENERGY STAR refrigerators, freezers and washing machines in the program without restrictions, even though they are not cost effective. This supports the EE message the Company will want to share with customers in response to upcoming rate cases.” (Staff Ex. 1.1, 2.)



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